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ABSTRACT

Three years after Title IX of the Education Amendments of 1972 became law, the U. S. Department of Health, Education, and Welfare provided regulations for the implementation of Title IX. This report reviews the implications of these regulations as well as several of the court cases in which discrimination on the basis of sex has been declared unconstitutional. A discussion of problems associated with mandated institutional self-evaluation and advantages and disadvantages of various methods used are included. Effectiveness of such self-studies still requires some time to assess. A brief review of the historical and present situation of women in higher education is presented, and its importance noted as the type of discrimination discussed provided the impetus for adoption of Title IX. However, Title IX represents departure from similar legislation (Titles IV, VI, and VII) in that sex discrimination is prohibited as opposed to specifying females as a specific target group. Women generally, and particularly in higher education, are still discriminated against. Implementation of Title IX regulations depends on the commitment of institutional chief administrators and the aggressiveness of the women charged with monitoring Title IX stipulations. (Author/JDS)

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WHY, WHAT AND WHERE TO?
Title IX, Educational Amendment of 1972

Title IX of the Educational Amendment of 1972 specifies "no person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance".[1]

The power of enforcement of Title IX is the denial of federal funds in the event an investigation by HEW indicates that discriminatory practices exist at a particular institution. Since the scope of institutions obtaining federal assistance has recently been greatly expanded through the legal interpretation that institutions whose students receive federally insured loans qualify as receiving federal assistance, the application of Title IX regulations has been extended to most private as well as all public post-secondary institutions of higher education and all public secondary schools.

Three years after becoming law, June 21, 1975, the U.S. Department of Health, Education and Welfare provided regulations for implementing Title IX. The unique feature of the Regulations is the requirement that each institution undertake a self-study in order to develop recommendations whereby current policy or practices deemed not in compliance will be appropriately altered.

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[1]U.S. Department of Health, Education, and Welfare/Office of Civil Rights, "Final Title IX Regulation Implementing Educational Amendments of 1972, p. 241248. 1975.

JC 760 460

These recommendations must be on file at each institution supported by information indicating data of fulfillment for review by HEW during the next three years. Although the enforcement of Title IX is first through voluntary compliance and in the event that fails enforcement action by administrative proceedings to terminate federal financial assistance until the institution ceases its discriminatory conduct or by other means such as referral to the Department of Justice in the event that provided by an institution is deemed insufficient, in practice, the possibility of HEW officials making an independent self-study and from these develop recommendat.ons is a strong impetus for institutions making an effort which will at least minimally meet the guidelines of the "Regulations".

The areas specified in the Regulations include admissions, course offerings, physical education, student and employee organizations and housing. Curriculum materials are specifically not included nor are social and fraternal organizations as a result of Senator Bayh's efforts. Post-secondary institutions are permitted three years to comply fully only in the area of intercollegiate sports in order to allow time to develop alternate scheduling of intercollegiate athletic games.

At the time of passage much attention was generated by the implications of the regulations on athletic policies and practices, maternity leave, and student housing. A review of current literature a year later

indicates a paucity of information and/or comment about Title IX. At many institutions it was not until the early part of 1976 that either the existing Affirmative Action Officer or another person already employed was designated as the person responsible for the "Self-Study" and "Recommendations".

At the time of issuing the regulations, HEW had not determined a model or method which educational institutions were to use for their self-study. Several institutions including Kent State University received grants and separately published comprehensive material. The Kent KEDS Manual was aimed primarily at secondary schools in the state of Ohio. Several universities including the University of Denver and the University of Iowa, having developed their own model, incorporated these in a kit which was available for purchase. A similar function for institutions of higher education was undertaken by the American Council on Education, Office of Women in Higher Education, who prepared "Institutional Self-Evaluation: The Title IX Requirement". These were subsequently issued by HEW July, 1976 as their official explanatory document. Review of these various sources indicates two organizational methods of undertaking the self-study were generally recommended: (1) establishment of ad hoc committees to obtain data on existing policies and procedures at the institution or (2) use of line administrators to collect such data.

Traditionally educational institutions have used the committee structure for a variety of special activities. That persons or persons must appoint the committees, however, creates the possibility of having the committee membership controlled and thus making the data obtained through the committee structure suspect as it may not be representative of actual practices at the institutions. A similar problem exists with the use of line administrators. A resolutions of this problem is to provide a means whereby the initial data collected, whether by line administrators or committees, is thoroughly reviewed and documented by employees and students of the institution. An advantage of using line administrators is that, since it is these people who must implement Title IX requirements, by thoroughly acquainting them with its significance and intent through direct involvement, they may be knowledgeable when required to make administrative decisions having Title IX implications.

As of July 21, 1976, the description of modifications or remedial steps to be undertaken for orderly and progressive elimination of the effects of discrimination must be available for review by HEW at each educational institution.

The effectiveness of requiring a self-study from which recommendations are developed will require considerable time to be determined; however, a review of the conditions which prompted the drafting of Title IX may aid administrators as they add monitoring compliance of Title IX to their existing responsibilities.

Historically the percentage of women participating in the work force of the United States has risen from 17% of all workers in 1890 to 39.3% as of April, 1974.

Projections made by the Bureau of Labor Statistics indicate that educational attainment by women is expected to increase and that by 1985, 78% will complete at least four years of high school and that those having four year college degree will equal 1/6 of all women workers. Projections are interesting but what of actual conditions?

In addition to the percentage of employed women increasing, the number of educated women and thus the number of women who, using criteria of educational attainment, are qualified for positions of authority and responsibility with commensurate remuneration is indicated in the following two tables: Table 2 "Women in the Labor Force, Selected Year 1890 through 1974",[1] and Table 92 "Historical Summary of Faculty, Student Degrees, in Institutions of Higher Education: United States 1869-72 to 1972-73".[2]

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[1] U.S. Dept. of Labor, Bulletin 297. "1975 Handbook on Women Workers, Employment Standards Administration, Women's Bureau." p. 184f.

[2] U.S. Dept. of HEW, Digest of Educational Statistics, p. 89. 1975.

TABLE 2.--WOMEN IN THE LABOR FORCE, SELECTED YEARS, 1890-1974

(Women 16 years of age and over)

Date	Number (in thousands)	As percent of all Workers	As percent of women Population	Population in U.S.: Millions Male	Female
HIGHLIGHTS[1]					
April 1974	35,165	39.3	45.0	102.9	108.4
April 1970	31,293	38.1	43.2	99.2	104.6
Midsixties (April 1965)	25,831	35.0	38.8		
Start of the sixties (April 1960)	22,985	33.3	37.4	99.8	98.7
Midfifties (April 1955)	19,987	31.2	34.8		
Korean War (April 1953)	19,116	30.6	34.0		
Pre-Korean War (April 1950)	17,882	29.1	33.0		
Post-World War II (April 1947)	16,150	27.6	30.9		
World War II (April 1945)	19,290	36.1	38.1		
Pre-World War II (March 1940)	13,783	25.4	28.9		
LONG-TERM TRENDS[2]					
1930 (April)	10,396	21.9	23.6	62.29	60.78
1920 (January)	8,229	20.4	22.7		
1900 (June)	4,999	18.1	20.0	38.86	37.22
1890 (June)	3,704	17.0	18.2	19.5	19.1

[1] Civilian labor force.

[2] Decennial census figures cover persons 14 years of age and over in the total labor force.

Source: U.S. Department of Labor, Bureau of Labor Statistics: Employment and Earnings, May 1960, 1965, 1970, and 1974. U.S. Department of Commerce, Bureau of the Census: Annual Report on the Labor Force, 1940-55. Social Science Research Council: "Labor Force in the United States, 1890-1960." *

*1975 Handbook on Women Workers, U.S. Department of Labor, Bulletin 297 Employment Standards Administration Women's Bureau.

Table 92.--Historical summary of faculty, students, degrees, and finances in institutions of higher education. United States, 1869–70 to 1971–72

Item	1869-70	1879-80	1889-90	1899-1900	1909-10	1919-20	1929-30	1939-40	1949-50	1959-60	1969-70	1971-72
1	2	3	4	5	6	7	8	9	10	11	12	13
Institutions												
Total	563	811	998	977	951	1,041	1,409	1,708	1,851	2,008	2,526	2,885
Faculty[1]												
Total	[2]5,553	[2]11,522	[2]15,809	23,868	36,480	48,615	82,386	146,929	246,722	380,554	[3]825,000	[3]907,000
Men	[2]4,887	[2]7,328	[2]12,704	19,151	29,132	35,807	60,017	106,328	186,189	296,773	[3]643,000	[3]707,000
Women	[2]666	[3]4,194	[2]3,105	4,717	7,348	12,808	22,369	40,601	60,533	83,781	[3]182,000	[3]200,000
Resident degree-credit enrollment[4]												
Total	[5]52,286	[5]115,817	156,756	237,592	355,213	597,880	1,100,737	1,494,203	2,659,021	[5]3,215,544	[6]7,136,075	[6]7,950,526
Men	[5]41,160	[5]77,972	[5]100,453	152,254	[5]214,648	314,138	619,935	893,250	1,853,068	[5]2,079,788	[6]4,247,018	[6]4,549,470
Women	[5]11,126	[5]37,845	[5]56,303	85,338	[5]140,565	282,942	480,802	600,953	805,953	[5]1,135,756	[6]2,889,057	[6]3,401,056
Earned degrees conferred												
Bachelor's and first-professional:[7]												
Total	9,371	12,896	15,539	27,410	37,199	48,622	122,484	186,500	432,058	392,440	827,234	930,684
Men	7,993	10,411	12,857	22,173	28,762	31,980	73,615	109,546	328,841	254,063	484,174	541,313
Women	1,378	2,485	2,682	5,237	8,437	16,642	48,869	76,954	103,217	138,377	343,060	389,371
Master's except first-professional:[7]												
Total	0	879	1,015	1,583	2,113	4,279	14,969	26,731	58,183	74,435	208,291	251,633
Men	0	868	821	1,280	1,555	2,985	8,925	16,508	41,220	50,898	125,624	149,550
Women	0	11	194	303	558	1,294	6,044	10,223	16,963	23,537	82,667	102,083
Doctor's:												
Total	1	54	149	382	443	615	2,299	3,290	6,420	9,829	29,866	33,363
Men	1	51	147	359	399	572	1,946	2,861	5,804	8,801	25,890	28,090
Women	0	3	2	23	44	93	353	429	616	1,028	3,976	5,273
Finances (in thousands of dollars)												
Total current income	[8]	[8]	[8]	[8]	$76,883	$199,922	$554,511	$715,211	$2,374,645	$5,785,537	$21,515,242	$26,234,259
Educational and general income	[8]	[8]	$21,464	$35,084	67,917	172,929	483,065	571,288	1,833,845	4,688,352	16,486,177	20,200,289
Total current expenditures	[8]	[8]	[8]	[8]	[8]	[8]	507,142	674,688	2,245,661	5,601,376	21,043,113	25,559,560
Educational and general expenditures	[8]	[8]	[8]	[8]	[8]	[8]	377,903	521,900	1,706,444	4,513,208	15,788,699	19,200,505
Value of physical property	[8]	[8]	55,426	253,599	460,532	741,333	2,065,050	[9]2,753,780	4,799,964	13,448,548	42,093,580	50,153,251
Endowment and other nonexpendable funds[10]	[8]	[8]	78,788	194,988	323,661	569,071	1,512,023	1,764,604	2,644,323	5,571,121	[11]10,853,816	[11]11,983,208

[1] Total number of different individuals (not reduced to full-time equivalent). Beginning in 1959-60, data are for the first term of the academic year.
[2] Estimated.
[3] Preliminary data.
[4] Unless otherwise indicated, includes students enrolled at any time during the academic year.
[5] Data for first term of the academic year.
[6] Opening fall enrollment.
[7] Beginning in 1969–70, includes all master's degrees.
[8] Data not available.
[9] Includes unexpended plant funds.
[10] Book value.
[11] Endowment funds only.

NOTE.--Beginning in 1959–60, includes Alaska and Hawaii.

SOURCES: U.S. Department of Health, Education, and Welfare, National Center for Education Statistics, *Biennial Survey of Education in the United States; Faculty and Other Professional Staff in Institutions of Higher Education; Comprehensive Report on Enrollment in Higher Education; Fall Enrollment in Higher Education; Earned Degrees Conferred; Financial Statistics of Institutions of Higher Education;* and unpublished data.

Using compilations of figures in these two tables, participation of women in higher education has risen from an estimated 21.28% in 1890 to a high of 43.68 in 1930 followed by a decrease during the Depression and early war years to 35.32 in 1960, then a rise as of 1971-72 to 42.78%.

Although the percentage of women continuing in higher education beyond initial enrollment and continuing through to the Doctoral degree decreases markedly--from 42.78% initial enrollment to 15% receiving Ph.D's in 1972, the percentage of those participating over the years in higher education has indeed increased significantly and steadily except during 1959-60. Furthermore, the number of women having M.A.'s as of 1929 has been 40% of the total M.A. population. Since an M.A. degree in a majority of educational specializations except for teaching at the university level is the terminal degree, there is and has been for some forty-six years a cadre of eminately educationally qualified women.

TABLE 80.--DISTRIBUTION OF WOMEN WORKERS BY EDUCATIONAL ATTAINMENT AND AGE, MARCH 1973

(Women 16 years of age and over)

	Total		Less than 4 years of high school	High School Graduates			
	Number (in thousands)	Percent		Total	4 years of high school	1 to 3 years of college	4 years or more of college
16 years and over....	33,905	100.0	29.1	70.9	45.1	13.8	12.0
16 to 19 years....	3,423	100.0	55.3	44.7	37.9	6.8	.1
20 to 34 years ...	12,561	100.0	14.9	85.1	48.4	19.8	16.9
35 years and over.	17,921	100.0	34.0	66.0	44.3	11.0	10.7

Source: U.S. Department of Labor, Bureau of Labor Statistics: Special Labor Force Report No. 161.*

* 1975 Handbook on Women Workers, U.S. Department of Labor, Bulletin 297 Employment Standards Administration--Women's Bureau.

TABLE 79.--HISTORICAL COMPARISONS OF WOMEN IN THE CIVILIAN LABOR FORCE, BY YEARS OF SCHOOL COMPLETED, SELECTED YEARS 1940 to 1973[1]

Year[2]	Total 18 to 64 years (in thousands)	Percent distribution by years of school completed							Median school years completed
		Total	Elementary		High School		College		
			Less than 5 years[3]	5 to 8 years	1 to 3 years	4 years	1 to 3 years	4 years or more	
1940[4]	13,150	100.0	6.4	30.9	18.7	28.6	8.8	6.6	11.0
1952	18,310	100.0	5.2	25.0	18.4	34.7	9.0	7.7	12.0
1957	19,548	100.0	3.9	21.9	19.1	37.3	9.3	8.4	12.1
1959	20,431	100.0	3.3	20.6	19.2	39.0	9.8	8.2	12.2
1962	21,996	100.0	2.8	17.8	18.8	39.7	11.2	9.7	12.3
1964	23,327	100.0	2.1	17.1	18.9	41.8	10.7	9.5	12.3
1965	23,845	100.0	2.0	15.8	18.9	42.9	10.5	9.9	12.3
1966	24,571	100.0	1.7	15.0	18.5	43.9	11.0	9.9	12.3
1967	26,859	100.0	1.6	13.3	17.7	44.5	12.3	10.6	12.4
1969	27,783	100.0	1.6	12.1	17.4	45.9	12.5	10.5	12.4
1970	28,950	100.0	1.4	11.3	17.0	46.3	13.3	10.7	12.4
1971	29,429	100.0	1.3	10.7	16.4	46.2	14.0	11.4	12.5
1972	30,566	100.0	1.2	9.6	16.4	47.1	13.9	11.8	12.5
1973	31,530	100.0	1.2	8.7	15.5	47.6	14.6	12.5	12.5

[1] Data for 1940-59 include only persons reporting educational attainment.

[2] Figures for each year refer to March of that year, with the exception of 1940 and 1952. For these years, data refer to April and October, respectively.

[3] Includes persons reporting no school years completed.

[4] 1940 Census of Population figures revised for comparability with labor force estimates fr[illegible]he Current Population Survey for 1952-59.

NOTE: In other tables in this chapter, population and labor force comprise all persons 16 years old and over in the civilian noninstitutional population and labor force rather than those 18 to 64. Because of rounding, sums of individual items may not equal totals.

Source: U.S. Department of Labor, Bureau of Labor Statistics: Special Labor Force Report No. 161.*

* 1975 Handbook on Women Workers, U.S. Department of Labor, Bulletin 297, Employment Standards Administration--Women's Bureau.

Thus the raw numbers and percent of women compared to men completing higher degrees as of 1930 and thereafter is significant in view of the educational criteria used to select "qualified" applicants.

Contrary to expectations that the percentage of educated women has increased progressively, a review of Table 92 establishes that the percentage participating in higher education as well as the percentage completing the three rungs of higher education in 1929-30 is only slightly less than that in 1971-72[1]. It is the availability but lack of recognition and job responsibility with commensurate paying positions obtained in higher education as well as other commercial areas that prompted the introduction of Title IX.

Title IX of the Education Amendment of 1972 was originally introduced as an amendment to the 1964 Civil Rights Act, but was not accepted until 1972 when it became an amendment to the Educational Act of that year. It was cosponsored by Senate Pell of Rhode Island and Senate Chiles of Florida. In August of 1971 it was passed by the Senate, in October it was reported to the House and passed the following month. The Senate and House compromise bill was discussed by the Senate and the House during March, 1572 and on May 24, 1972 it was approved by the Senate, 63 to 15, 21 not voting and on June 8, 1972 it was passed by the House, 218 to 180 with 34 not voting. During the Senate debate, Senator Bayh

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[1] Ibid., 1975 Handbook.

introduced an amendment excluding social fraternities and sororities, YMCA, YWCA, Girl or Boys Scouts, Camp Fire Girls and any voluntary youth organization whose members were under 19 years of age and traditionally of one sex.[1] On June 23, 1972, the President signed the Amendment.

Even before the passage of Title IX, the lower federal courts had already sustained the argument that sex based discrimination violated the Due Process clause of the Fourteenth Amendment and legislation passed prohibiting this type of discrimination was constitutional. As of March, 1976, there have been some 580 cases tried before either the Federal District Courts or the Federal Appeals Courts. These 580 cases represent only those cases in which the word "sex discrimination" appear in the syllabus. Many other cases have undoubtedly been joined with civil rights action and been tried under the umbrella of the Equal Protection Clause of the Fourteenth Amendment. Also, cases dealing essentially with sex discrimination but not using sex discrimination in the description of the case or tried under another constitutional issue are not included in this figure.

There have been ten "sex discrimination" cases accepted and decisions rendered by the Supreme Court of the United States. The trend appears to be that the Court strictly scrutinizes classifications based on sex and if the defendant cannot justify the validity or reason for the means and the ends achieved by the use of sex discrimination, the activity will be declared unconstitutional.

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[1] Congressional Record. Vol. 118.

A single case is indicative of this attitude. In Bergelman vs San Francisco United School District, 501 F.2 D 1264 (C.A. California, 1974), one of the two issues was "whether a school district, in order to maintain equal number of boys and girls in the school, may apply higher admissions requirements to girls than to boys".[1] The holding was that requiring girls to have a higher academic average than boys for admissions to a public high school which was nothing more than an academic high school, violated the Equal Protection Clause of the Fourteenth Amendment. The rationale was "that education provides access to jobs and sex discrimination in education is potentially destructive to the disfavored sex...Lowell High School, as a conduct to better university education and hence to better jobs, is exactly that type of educational program to which Congress intended to eliminate sex discrimination when it passed Title IX."[2]

It is therefore evident that the legal means was already available whereby a person could obtain relief from the courts before the passage of Title IX; however, Title IX which is applicable to educational institutions only, was felt necessary because many of these institutions seem to be acting as a deterent to changing societal attitude toward sex discrimination. Furthermore, in that the number of male and females both in population and among those attending educational instititons, including higher education, is rapidly reaching the 50% mark, (Table 83: Total Enrollment in Instituions of Higher Education by Sex, Type of

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[1] Beckelman vs San Francisco Unified School District, 501 F.2 D 1264 (C.A. Cal. 1974).

[2] Ibid.,

Enrollment and Control of Institution· United States, Fall 1974 and Table 84 First-time Degree Credit Enrollment in Institutions of Higher Education, by Sex and by Control of Institutions, Fall, 1946 to Fall, 1975) authors of Title IX felt justified in the use of peer pressure within the educational institutions aided by federal law to obtain change in both educational programs and educational employment practices. As a result, Title IX incorporated the two unique features: (1) self-evaluation and recommendations prepared internally by institutions and (2) internal grievance procedure as a major thrust for enforcement.

The requirement of an internal grievance policy and procedure whereby a person having a sex discrimination grievance can attempt to obtain resolution is a further emphasis on peer decision making. Grievance policy and procedure insuring due process was initially developed in part through the union movement and has been accepted for some time by such educational organizations as the AAUP. Traditionally, only full time faculty members have had access to such a process for resolution of grievances in educational institutions and therefore the requirement that <u>all</u> employees have access is a departure from educational tradition. Information elicited by means of a grievance procedure, previously when the case went to court, was reviewed without further examination of the facts; however, in Jewell D. Chandler, petitioner, V. Richard L. Roudebush, etc., et al, No. 74-1599, Supreme Court of the United States Slip Opinion, June 1, 1976, it was determined that a person appealing administrative decisions is entitled to a new (nova) trial. Such a person before

resorting to the Courts would have to have exhausted all administrative remedies (channels). This decision adds significantly to the importance of the internal grievance policy and procedure because both the process and contents of such are subject to review by a court. Now that additional information may be solicited as a result of incomplete or inaccurate information being collected through the grievance procedure accurate fact finding and equitable resolutions through internal grievance procedure may be encouraged.

Title IX represents departure from similar legislation, Titles IV, VI and VII in that sex discrimination is prohibited as opposed to specifying females as a specific group which is not to be discriminated against. This feature has already resulted in the use by both males and females of Title IX.

This distinction has been further strengthened by publications prepared by the National Foundation for the Improvement of Education for HEW. These documents entitled "Complying with Title IX the First Twelve Months", and "Complying with Title IX: Implementing Institutional Self-Evaluation" make it clear through the use of explanatory material and check lists that the Federal government's intent is to end discrimination for both sexes. Since Title IX is unique to education, what can be expected?

Industry has had considerable experience with the intent of Title IX because discrimination has been prohibited for reason of sex for several years. According to a recent Wall Street Journal entitled "Lagging Behind Though More Women Work, Job Equality Fails to Materialize"[1] the Labor Department reports the current median income of working women was 57% of the median wage of men--a decrease from nearly 64% in 1955. Furthermore, "women still face not only a status quo of unequal pay, 'dead end jobs' but discrimination that in some ways is more pernicious than a decade ago".[2] Several reasons are given for this. Professor Wallace, Professor of Economics at the Sloan School of Management at MIT states "no one's to blame, its just the way the system works. Its blindly doing things the way they've always been done."[3] The legal, accounting and medical professions have made a great attempt to make it possible for women to enter these occupations and their success is evident in the increase in the numbers of women who are now holding professional degrees and working actively in these professions. However, in the area of education and social work, two fields where women have long outnumbered men, the market is decreasing because of declining birth rates and the expectation and prospect therefore of low paying, low skilled jobs is probably more realistic than the expectation of women "taking over" the professionally demanding and financially rewarding position. In fact, the very conservatism of education as an institution indicated by the inclusion of Title IX as an amendment suggests

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[1] Wall Street Journal, July 6, 1976, p. 1

[2] Ibid.,

[3] Ibid.,

that active implementation of Title IX depends solely upon the degree of commitment of the chief administrators of the educational institution, the degree to which that commitment is communicated to mid-administrators and the aggressiveness of women now employed in monitoring the stipulations of Title IX.

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